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No. 47

IN THE

Supreme Court of the United States

October Term, 1957

VIRGINIA LAMBERT, *Appellant*

v.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appeal From the Superior Court of the State of California in and for the County of Los Angeles.

BRIEF OF AMICUS CURIAE FOR APPELLANT.

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BRIEF OF AMICUS CURIAE FOR APPELLANT.

Opinion Below.

The opinion of the Appellate Department of the Superior Court, County of Los Angeles, State of California is unreported. It appears at R. 29-30.

Jurisdiction.

Jurisdiction of this Court is invoked under the provisions of 28 U. S. C. §1257(2). Appellant was convicted in the Los Angeles Municipal Court of violating §52.39 of the Los Angeles Municipal Code [R. 18, 20]. On appeal the Appellate Department of the Superior Court, County of Los Angeles, State of California, affirmed [R. 30]. That court is the highest court of the State of California to which an appeal could be taken

in this case. See *Alberts v. California*, 353 U. S. ....., 1 L. ed. 2d 1498, 1505; *Buck v. California*, 343 U. S. 99, 101, 105; *Carlson v. California*, 310 U. S. 106, 111. The judgment of said court was entered on March 2, 1956 [R. 31]. Appellant's notice of appeal to this Court was filed on April 13, 1956 [R. 31-32]. This Court noted probable jurisdiction on November 19, 1956. 352 U. S. 914. The case was argued on April 3, 1957. Reargument was ordered on June 3, 1957. 25 U. S. L. Week 3359. On June 24, 1957, the Court invited *amicus curiae* to appear for appellant. 25 U. S. L. Week 3383.

Statutes Involved.

The text of §52.38 through §52.43 of the Los Angeles Municipal Code is set out in an Appendix.

Questions Presented.

A Los Angeles municipal ordinance makes it a crime punishable by imprisonment for a "convicted person" to be or remain in the city for more than five days without registering with the Chief of Police and supplying detailed information to him. On appeal from a conviction for failure to register, the questions presented are:

1. Does conviction under the ordinance in the absence of wrongful intent violate due process of law?

2. Does the ordinance constitute an unwarranted invasion of the right of privacy, right to liberty, and privileges and immunities of a citizen of the United States in that it (a) purports to make unlawful a morally innocent and passive status and (b) is not reasonably restricted to the evil with which it purports to deal?

Statement.

On February 2, 1955, appellant Virginia Lambert was arrested in Los Angeles and charged with a violation of §52.39 of the Los Angeles Municipal Code, a misdemeanor [R. 15]. That section makes it unlawful for a convicted person to be or remain in the City of Los Angeles for more than five days without registering with, and furnishing information to, the Chief of Police. A "convicted person" is defined in §52.38 of the Municipal Code to include any person who has been convicted of an offense punishable as a felony in California subsequent to January 1, 1921.

Appellant's trial in Los Angeles Municipal Court for violation of the registration ordinance commenced on April 14, 1955 [R. 2]. As set forth in the Engrossed Statement on Appeal prepared by the parties and approved by the trial judge [R. 15-21], the evidence at the trial established the following facts: At the time of her arrest, appellant had been a resident of Los Angeles for an uninterrupted seven and one-half year period [R. 17]. On May 29, 1951, and on June 18, 1951, she had been convicted in the Los Angeles County Superior Court of the crime of forgery, an offense punishable as a felony under §470 of the California Penal Code [R. 15-16].* At the time of her arrest, appellant had not registered with the Chief of Police [R. 17].

At her trial for failure to register, appellant asserted that the complaint against her fails to state a cause of

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*Appellant's forgery convictions stemmed from related transactions, and the sentences, which were both imposed on August 17, 1951, were ordered to run concurrently.

action because §52.39 denies her due process of law and equal protection of the laws guaranteed by the Constitution of the United States [R. 16]. The Municipal Court rejected this claim of unconstitutionality [R. 16]. Appellant offered to testify that she did not know that she had a duty to register, but the Municipal Court sustained an objection to this testimony [R. 17].

On April 19, 1955, a jury found appellant guilty as charged [R. 18]. The court suspended imposition of sentence and placed her on probation for three years on condition that she violate no law dealing with public health, welfare or morals and that she pay $250 [R. 20].

Appellant moved for arrest of judgment and a new trial on the ground, among others, that §52.39 is contrary to the Federal Constitution [R. 19-20]. In support of the motion for arrest of judgment, appellant offered to testify as follows [R. 19-20]: She was arrested on a street corner by two officers who began to search her without giving any reason for her arrest or detention. She was taken to a police station and searched and interrogated for two hours. When the investigation failed to show that she was engaged in any other present criminal conduct, she was charged with failure to register under §52.39 of the Municipal Code [R. 19-20]. The Municipal Court refused this proffer of evidence and denied the motion for arrest of judgment and new trial [R. 20].

An appeal was taken to the Appellate Department of the Superior Court, Los Angeles County, State of California [R. 21]. On the appeal, the constitutionality of §52.39 of the Municipal Code was again challenged [R. 20]. On March 2, 1956, the Appellate Department

affirmed the Municipal Court [R. 31]. In its memorandum opinion, the appellate court held that wrongful or criminal intent is not an element of the crime created by the ordinance and that it is no defense that appellant did not know of the registration requirement [R. 30]. The court also stated, "There is no merit to the claim that the ordinance is unconstitutional" [R. 30].

Summary of Argument.

I.

A. The Los Angeles ordinance makes it a crime punishable by imprisonment for an unregistered convicted person "to be or remain" in the city for more than five days. Appellant neither knew nor should have known of the existence of the ordinance making her status a crime. Los Angeles has taken none of the obvious steps to publicize the registration requirements. Because the status penalized by the ordinance was morally innocent, appellant did not have the warning or notice provided by a sense of wrongdoing that usually attends legally punishable conduct. Moreover, since her status was also entirely passive, she had no reason for inquiring as to the possible existence of applicable regulatory statutes.

B. In these circumstances, appellant's conviction under the Los Angeles ordinance in the absence of wrongful intent violates due process of law. The comprehensive opinion in *Morissette v. United States*, 342 U. S. 246, indicates that except in a limited class of cases referred to as "public welfare offenses," due process requires that wrongful intent be an element of every crime. The few cases in which this Court has sustained convictions under statutes which do not require wrongful intent are readily distinguishable from the present case on one or more

of the following grounds: (1) the person convicted either knew or should have known that his active conduct was unlawful or at least subject to regulation; (2) the offense was not punishable by imprisonment; (3) the conduct involved was objectively immoral.

II.

A. To require registration by a person who has been convicted any place in the world at any time since 1921 of a crime punishable as a felony in California or of certain other crimes invades constitutionally-protected rights. The right of privacy is significantly compromised by forcing the convicted person to be photographed and fingerprinted and to give extensive personal data to the police who may put the photograph in a rogues' gallery and disseminate the information in the course of their duties. The right of liberty is infringed not only by the registration process itself but also by such consequences of registration as detention in police roundups and curtailment of the person's right to live and work where he will. The ordinance also infringes a privilege and immunity of United States citizenship by burdening the right to move freely within the United States.

B. Appellant's status as an unregistered convicted person does not justify the invasions of constitutional rights outlined above. The dictum in *City of New York v. Miln*, 11 Pet. 102, that a state can take "precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts" was thoroughly discredited in *Edwards v. California*, 314 U. S. 160. The status of being an unregistered convicted person can no more be the basis for restrictive laws than can the status of indigence or race. In every case in which this Court has

upheld a registration statute, the requirement was imposed on persons engaged in an occupation or other active conduct which was properly subject to regulation. To our knowledge, no city in any common law country requires registration of convicted persons.

C. As in *Butler v. Michigan*, 352 U. S. 380, the legislation here is not reasonably restricted to the evil with which it purports to deal. Appellee states that the ordinance is "directed at the evil of professionalism in crime." In fact, however, its dragnet is undiscriminating. It includes first offenders and probationers despite the fact that they are sharply distinguishable from "professional criminals" and bear a close behaviorial resemblance to the population at large in terms of the only significant yardstick—the likelihood of subsequent criminal behavior. Likewise, the ordinance includes all persons convicted since 1921, without regard for the fact that persons whose convictions are followed by substantial periods of lawful behavior are highly unlikely to commit crime again and cannot logically or properly be grouped with professional criminals. The narrowly-drawn laws of those foreign countries which require certain habitual offenders to notify the police of their addresses pinpoint the unjustifiably broad sweep of the Los Angeles ordinance.

ARGUMENT.

I.

Conviction Under the Ordinance in the Absence of Wrongful Intent Violates Due Process of Law.

The Los Angeles ordinance makes it a crime for a "convicted person" to be or remain in the city for more than five days without registering with the Chief of Police. §52.39.* Appellant was convicted of this crime without proof of wrongful or criminal intent. As a foundation for showing that conviction in the absence of wrongful intent violates due process, we turn first to consider appellant's lack of knowledge that her status as an unregistered convicted person was unlawful.

A. Appellant Neither Knew nor Should Have Known of the Existence of the Ordinance Making Her Innocent and Passive Status a Crime.

The record indicates that appellant had no knowledge that her status as an unregistered "convicted person" was a crime punishable by imprisonment.** At her trial she offered to testify that she did not know at or before the time of her arrest that she was under a duty to register with the Chief of Police [R. 17]. The court, however, sustained an objection to this testimony [R. 17]. On appeal, the court below upheld this exclusion of evi-

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*A "convicted person" is comprehensively defined by §52.38 of the Los Angeles Municipal Code to include anyone who has been convicted any place in the world since 1921 of any crime punishable in California as a felony or of certain other crimes.

**Section 11.00(m) of the Los Angeles Municipal Code provides that failure to comply with any of the mandatory requirements of the code is punishable by a fine of not more than $500, or by imprisonment in the city jail for not more than six months, or both. Each day's violation is a separate offense.

dence, stating that lack of knowledge is no defense [R. 30].

It would have been extraordinary indeed if appellant had known or even suspected that she was subject to fine and imprisonment unless she registered with the Chief of Police. The original version of the Los Angeles ordinance was enacted on September 12, 1933. On April 10, 1936, that version was repealed and the City Council adopted a substitute ordinance which, as amended, is now in effect. In accordance with the requirements of §31 of the Los Angeles City Charter, the 1933 version of the ordinance and the 1936 substitute were published once at the time of their enactment in the Los Angeles Daily Journal, a legal newspaper with a current circulation of approximately 4,000.* This Court has frequently acknowledged the ineffectiveness of notice by publication under ordinary circumstances.** Here, there are the added circumstances that appellant was but nine year old in 1936 and that she did not come to Los Angeles until 1947 [R. 17].

At the time appellant was sentenced for forgery on August 17, 1951, and when her probation was modified on June 10, 1952, she was not, judging from the transcripts of those proceedings, notified by the judge of her

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*Los Angeles Daily Journal, September 13, 1933, p. 10; *Id.*, April 14, 1936, p. 14. Subsequent amendments have not entailed republication of the ordinance.

**"In too many instances notice by publication is no notice at all." *Walker v. Hutchinson City*, 352 U. S. 112, 117. "Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed." *Mullane v. Central Hanover Tr. Co.*, 339 U. S. 306, 315.

duty to register.* Between the time of her convictions in 1951 and her arrest in 1955—the period during which appellant was under a theoretical duty to register—the registration ordinance was almost inaccessible. The most recent edition of the Los Angeles Municipal Code containing the ordinance had been published in 1946.** After 1946, only by asking the informal advice of the ordinance clerk could appellant have determined whether the registration ordinance was still in effect or had been repealed or amended.

Los Angeles has taken none of the obvious steps to bring the registration requirement to the attention of convicted persons. The ordinance does not require that the authorities in charge of the jails in Los Angeles notify convicted persons of their duty to register upon their release.*** Nor does the ordinance provide for publicizing the registration requirement, and city officials apparently make no effort to do so.**** Moreover, appel-

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*Certified copies of transcripts of those proceedings (Nos. 142412 and 142123, Los Angeles County Superior Court) have been filed with the Clerk of this Court.

**The 1956 Directory of Los Angeles Attorneys (published by Parker & Son, Inc.) carries an advertisement following p. 286 which states, "At Last! A new edition of the Los Angeles Municipal Code—First printing since 1946."

***To be contrasted are the careful provisions of California Penal Code §290 which require courts, prisons, and other institutions in California to give sex offenders notice of their duty to register under that section. Prison officials and probation officers may in some cases provide information concerning municipal registration ordinances, see Note, 103 U. of Pa. L. Rev. 60, 82-84 (1954), but there is no evidence that appellant received any warning of her duty to register from such sources.

****To be compared are the extensive efforts of the federal government to publicize the requirements of the Alien Registration Act, 66 Stat. 224 (1952), 8 U. S. C. §1302, by notices in post offices and other public places and by radio announcements.

lant's experience [R. 20] indicates that it is not the uniform policy of the police to give convicted persons an opportunity to register if they fail to do so because of ignorance of the requirement.*

A vital factor remains to be mentioned. The Los Angeles ordinance outlaws not conduct or an activity but the wholly passive status of being an unregistered convicted person in Los Angeles. In addition to being passive, the status penalized is morally innocent and has, to borrow Judge Learned Hand's phrase, "no ethical significance." *United States v. Dennis,* 183 F. 2d 201, 215 (2d Cir., 1950). As in the case of possession of agricultural land by a person ineligible for citizenship, *Morrison v. California,* 291 U. S. 82, 90, there is "not even a hint of criminality" for an unregistered convicted person "to be and remain" in Los Angeles for five days.

Thus, not only did appellant have no knowledge of her duty to register, but the nature of the crime created by the ordinance prevented her from having any inkling that she was subject to legal sanctions. Because the status penalized by the ordinance was morally innocent, appellant did not have that warning or notice provided by a sense of wrongdoing which usually attends legally punishable conduct. Moreover, because her status was entirely passive, she—unlike a person actively engaged in a business or occupation—had no reason for inquiring as to the possible existence of applicable regulatory statutes. In short, the effect of appellant's lack of knowl-

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*The net effect is reminiscent of Caligula's Rome where the laws were written in fine print and hung up on pillars too high for the people to read. 1 Blackstone's Comm. *46; see Bentham, The Limits of Jurisprudence Defined 155, 282 (Everett ed. 1945).

edge of her duty to register is seriously aggravated by the fact that neither her status nor her conduct provided any "built-in" notice that she was committing a crime punishable by imprisonment.

B. Due Process Requires Proof of Wrongful Intent for Conviction of the Crime Created by the Ordinance.

The court below held that the elements of the crime created by the ordinance do not include wrongful or criminal intent [R. 30]. In accordance with that holding, the court below rejected the defense that appellant did not know that she had to register [R. 30]. The trial court was of the same view. The Engrossed Statement on Appeal shows that the trial court refused appellant's requested instruction on intent and "instructed the jury that defendant was guilty if she knew, at the time of her failure to register with the Chief of Police as charged, that she had been found 'guilty of a crime punishable as a felony,' that forgery is a crime punishable as a felony, and that ignorance of the law requiring Registration is no excuse" [R. 18].* Thus, appellant was convicted of a crime punishable by imprisonment in the absence of any showing of wrongful intent.

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*Although the Engrossed Statement on Appeal presumably is conclusive in this Court, the record indicates that while one instruction [No. IV] on intent requested by appellant was "Refused" [R. 14], another such instruction [No. II] was "Given as Modified" [R. 10-11]. Even if it is assumed, however, that instruction No. II was given as set forth at page 11 of the record, the other instructions of the trial court, and the holding of the court below that wrongful intent is not required, dissipated the effect of any such instruction, and effectively eliminated the element of wrongful intent. Moreover, if wrongful intent to violate the ordinance had been regarded by the courts below as an element of the crime, it would have been an error of constitutional proportions to refuse to permit appellant to testify that she did not know of her duty to register [R. 17].

The element of wrongful intent cannot, we submit, constitutionally be eliminated under the circumstances of this case.* When (1) an ordinance makes unlawful a morally innocent and passive status, (2) the accused neither knew nor should have known that her status had been made unlawful by the ordinance, and (3) the crime created is punishable by imprisonment—in such a case, due process requires that a wrongful intent be proved. A review of the pertinent decisions of this Court will make this clear.

In *Morissette v. United States*, 342 U. S. 246, the Court comprehensively canvassed the necessity for wrongful or criminal intent as an element of crimes. The Court began with a résumé of the historical background, commenting that the requirement of wrongful intent is "no provincial or transient notion." 342 U. S. at 250. Tracing the "unqualified acceptance" of the requirement by English common law in the Eighteenth Century and its early pronouncement by Nineteenth Century commentators, the Court stressed that the concept took "deep and early root in American soil." 342 U. S. at 250-252.

The opinion in *Morissette* recognized, however, that the Court has reluctantly approved the elimination of intent in a narrow category of offenses. The Court em-

*Wrongful intent, as used in this brief in connection with the Los Angeles ordinance, refers to an intention not to comply with the ordinance despite knowledge of its requirements. With regard to an offense involving acts which are harmful to others or objectively immoral, a person may have wrongful intent without knowledge of a statute making the acts unlawful. But, with respect to such crimes as that created by the Los Angeles ordinance, "knowledge that the relevant conduct is legally forbidden is an essential element of its immorality", and such knowledge is a prerequisite to the existence of wrongful intent. See Hall, General Principles of Criminal Law, 373-374 (1947).

phasized that the elimination of intent in those limited circumstances has been justified by such factors as the assumption of responsibility involved in affirmative conduct and the lightness of the penalties—factors which are not present with respect to the offense created by the Los Angeles ordinance:

> ". . . The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities. Also, penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation. Under such considerations, courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime. This has not, however, been without expressions of misgiving." 342 U. S. at 256.

The Court then indicated that careful analysis is required to determine whether wrongful intent can be eliminated as an element of a particular crime:

> "Neither this Court nor, so far as we are aware, any other has undertaken to delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not. We attempt no closed definition, for the law on the subject is neither settled nor static." 342 U. S. at 260.

Turning to the specific question presented by Morissette's conviction, the Court held that criminal intent is an essential element of the offense under 18 U. S. C. §641 prohibiting conversion of government property.

It is clear that, except in a limited class of cases, the requirement of wrongful intent as an element of crimes is essential to due process. The historical materials set forth in *Morissette* establish that such a requirement is "so rooted in the traditions and conscience of our people as to be ranked as fundamental." See *Rochin v. California,* 342 U. S. 165, 169; *Snyder v. Massachusetts,* 291 U. S. 97, 105.* Accordingly, the question here is whether the crime created by the ordinance falls into that "limited class of offenses" as to which criminal intent can be eliminated as an element. *Morissette v. United States,* 342 U. S. at 258, 260. Examination of the principal cases in which the Court has upheld criminal statutes dispensing with wrongful intent will demonstrate that the registration ordinance does not properly fall within the "limited class."

The foundation case is *Shevlin-Carpenter Co. v. Minnesota,* 218 U. S. 57, where the Court considered the constitutionality of a Minnesota statute prohibiting the cutting and removal of timber on state lands without regard to intent. The Court rejected an argument that "elimination of intent as an element of an offense is contrary to the requirements of due process of law." (*Id.* at 67.) However, three significant factors—none of which is present in the instant case—served to support the propriety of dispensing with wrongful intent in *Shevlin-Carpenter:* (i) the only penalty involved was double-damages, the Court holding that a provision of the Minnesota statute for imprisonment was separable and

*In *Felton v. United States,* 96 U. S. 699, 703, the Court stressed that the law "is not so unreasonable as to attach culpability, and consequently to impose punishment, where there is no intention to evade its provisions."

reserving the question of a subsequent prosecution under that portion of the statute (*Id.* at 66-67);* (ii) the Court indicated that Shevlin-Carpenter should have known that its conduct was unlawful, emphasizing that the company "knew the limitations" of its permit to cut timber on state land and that "they took it at the risk and consequences of transgression" (*Id.* at 69); (iii) the Court stressed that Shevlin-Carpenter's trespass was "a legal wrong, not an innocent act" (*Ibid*).**

United States v. Balint, 258 U. S. 250 and *United States v. Behrman*, 258 U. S. 280, which were in effect limited to their particular facts in *Morissette*, 342 U. S. at 260, involved prosecutions under Section 2 of the Narcotic Drug Act of December 17, 1914, a provision making an unauthorized sale of narcotics a crime without regard to wrongful intent. Those cases are distinguishable from the instant case in that the defendants there were actively dealing in a highly dangerous, habit-forming drug. For that reason they should have known or at least suspected that their handling of narcotics was subject to regulation. The sale of narcotics has long had

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*In sustaining the power of the State of New York to impose "moderate" fines for unintended violations of regulations prescribed by the state's labor law, Judge Cardozo speaking for the New York Court of Appeals carefully added, "we are not to be understood as sustaining to a like length the power to imprison." *People v. Sheffield Farms-Slawson-Decker Co.*, 225 N. Y. 25, 32-33, 121 N. E. 474, 477 (1918). See also *Morissette v. United States*, 342 U. S. at 256.

**The *Shevlin-Carpenter* case was accepted without question as authority for dispensing with wrongful intent in *United States v. Balint*, 258 U. S. 250, but it may be significant that *Shevlin-Carpenter* is not even mentioned in *Morissette*.

overtones of immorality which also should have served as a warning to the defendants in those cases.*

In *United States v. Dotterweich*, 320 U. S. 277, the Court sustained a conviction under sections of the Federal Food, Drug, and Cosmetic Act which make interstate shipment of misbranded or adulterated drugs a misdemeanor without regard to intent. However, the defendant in that case (unlike appellant in the case at bar) was actively engaged in a business which he either knew or should have known was subject to stringent regulation. Thus, in each of the foregoing decisions of this Court, the elimination of wrongful intent was justified by significant factors not present in the instant case.**

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*The Court in the *Balint* case suggests that the collection of taxes may require the elimination of intent in crimes against the revenues. 258 U. S. at 252. Our statutes, however, make wilfulness an element of crimes relating to tax evasion and false returns. 1954 Int. Rev. Code §§7201-7207; see *Spies v. United States*, 317 U. S. 492. Moreover, the abandonment of intent as an element of offenses against the revenues might be justified on the theory that residents of the United States should know of their duty to file returns and pay their taxes in view of the widespread publicity given that duty.

**The necessity of wrongful intent was not an issue in any of the cases cited by appellee in which this Court has upheld statutes requiring registration of particular groups (Br. on first argument, 9-15). Important federal statutes requiring registration make criminal intent or wilfullness an element of the crime. *E. g.*, Universal Military Training and Service Act, 62 Stat. 622 (1948), 50 U. S. C. App. §462; Alien Registration Act, 66 Stat. 225 (1952), 8 U. S. C. §1306 ("Any alien required to apply for registration . . . who wilfully fails or refuses to make such application"); Similarly, under the federal census statutes, only a person who "refuses or wilfully neglects" to answer questions submitted to him is subject to punishment. 68 Stat. 1023 (1954), 13 U. S. C. §221: Punishment of lobbyists, bookmakers, foreign agents and the like for failure to register without regard to wrongful intent might be constitutionally justified on the ground that they are engaged in active conduct which they know or should know is likely to be subject to regulation.

Inroads on the necessity for wrongful intent have also been made in cases where criminal responsibility is imposed for negligence or for "culpable" or "wanton" negligence. See *e. g. People v. Costa*, 40 Cal. 2d 160, 252 P. 2d 1 (1953); *Commonwealth v. Welansky*, 316 Mass. 383, 55 N. E. 2d 902 (1944). Punishment of these offenses of negligence, however, is consistent with the analysis made here, for, by definition, the negligent person—and *a fortiori* the wantonly negligent person—knows or should know that his conduct creates an unreasonable risk to others. See Perkins, A Rationale of Mens Rea, 52 Harv. L. Rev. 905, 913-915 (1939); Restatement of Torts §§282, 284, 289.

The category of crimes in which the element of wrongful intent may be eliminated has often been referred to by this Court and other as "public welfare offenses."* The phrase appears to have been coined in the widely-cited article, Sayre, Public Welfare Offenses, 33 Col. L. Rev. 55 (1933). Based on a study of a half-century of decisions, Sayre divides the offenses punishable without wrongful intent into the following groups:

(1) Illegal sales of intoxicating liquor;
(2) Sales of impure or adulterated food or drugs;
(3) Sales of misbranded articles;
(4) Violations of anti-narcotic acts;
(5) Criminal nuisances;
(6) Violations of traffic regulations;
(7) Violations of motor-vehicle laws;
(8) Violations of general police regulations, passed for the safety, health or well-being of the community. (*Id.* at 73.)

Morissette v. United States, 342 U. S. at 255; Note, 66 Harv. L. Rev. 130 (1952).

On the basis of Sayre's analysis, the offense created by the Los Angeles ordinance would not be punishable in the absence of wrongful intent. Failure to register falls into none of Sayre's categories of offenses punishable without wrongful intent.* When the offense is punishable by imprisonment, Sayre concludes that "the individual interest of the defendant weighs too heavily to allow conviction without proof of a guilty mind" (*Id.* at 72). Moreover, Sayre stresses that, "The group of offenses punishable without proof of any criminal intent must be sharply limited," for "The sense of justice of the community will not tolerate the infliction of punishment which is substantial upon those innocent of intentional or negligent wrongdoing . . . ." (*Id.* at 70).**

In sum, the nature of the offense and the circumstances surrounding appellant's failure to register show that wrongful intent cannot constitutionally be eliminated as an element of the crime created by the ordinance. Failure to register for but a single day is punishable by six months' imprisonment in addition to a fine, and each day's failure constitutes a separate offense. Appellant neither knew nor should have known of the existence of the registration requirement. The status which the ordinance makes criminal is morally innocent and passive and hence does not contain the built-in notice ordinarily accompanying wrongful or active conduct. Conviction in

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*The cases cited by Sayre in support of the omnibus category number 8 do not include any offenses even remotely analogous to that created by the ordinance. See 33 Col. L. Rev. at 87-88.

**Hall, General Principles of Criminal Law 279-322 (1947), levies stern criticism on the imposition of criminal responsibility without wrongful intent or fault, and suggests that the constitutionality of eliminating wrongful intent as an element even of the public welfare offenses should be re-examined. See also Allen, Book Review, 66 Yale L. J. 1120 (1957); Mueller, Mens Rea and the Law Without It, 58 W. Va. L. Rev. 34 (1955).

these circumstances in the absence of wrongful intent is hostile to due process of law.*

A holding that wrongful intent is an essential element of the crime created by the ordinance would neither unsettle the law nor hamper proper law enforcement. The great bulk of crimes already require proof of criminal intent. The traditional "public welfare offenses" would still be punishable. The requirement of wrongful intent need be held applicable only in the unusual situation presented by this case in which an ordinance or law makes punishable by imprisonment a morally innocent and passive status which the person involved neither knew nor should have known had been made unlawful.**

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*Since convicted persons are often not aware of their duty to register, the ordinance is susceptible of being used by the police to harass persons who are regarded as "undesirable." Although the statements attributed to former Los Angeles Chief of Police James Davis in Note, 103 U. of Pa. L. Rev. 60, 63 n. 17 (1954), suggest that there may have been selective harassment under the ordinance, the record here does not contain the evidence of systematic or intentional discrimination necessary to support such a charge. See *Edelman v. California*, 344 U. S. 357, 359. However, if intent were held to be a necessary element of the crime, the possibilities of unfair harassment would be drastically reduced if not totally eliminated.

**Subsequent to the final decision below, the California Supreme Court held that wrongful intent is an essential element of the crime of bigamy even though the state statute is silent on the matter. *People v. Vogel*, 46 Cal. 2d 798, 299 P. 2d 850 (1956). In the *Vogel* case, the California Supreme Court relied on §20 of the California Penal Code which provides that "In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence." In the instant case, the trial court refused to give an instruction quoting this Penal Code section [R. 14], and the point was preserved on appeal [R. 20]. Moreover, the Los Angeles ordinance excludes wrongful intent neither expressly nor by necessary implication, and under the rule stated in *Vogel*, 46 Cal. 2d at 801, such intent would be an indispensable element of the crime of failing to register. Thus, while there may be distinctions between *Vogel* and the case at bar, see 44 Cal. 2d at 801, n. 2 and 804, the Court may wish to remand this case for consideration in light of *Vogel*. *Cf. Musser v. Utah*, 333 U. S. 95.

II.

The Ordinance Is an Unwarranted Invasion of the Right of Privacy, Right to Liberty, and Privileges and Immunities of a Citizen of the United States in That It Penalizes a Morally Innocent and Passive Status and Is Not Reasonably Restricted to the Evil With Which It Purports to Deal.

A. Constitutionally-Protected Rights Are Invaded by the Ordinance.

For a person who has been convicted any place in the world at any time since 1921 of any offense punishable in California as a felony as well as of certain other crimes, arrival in Los Angeles is marred by an onerous requirement. Within five days, he is required to register with the Chief of Police and to furnish information ranging from a full description of his person to a statement of the kind of residence in which he is living. §52.39(a),(d). At time of registration, his photograph and fingerprints will be taken. §52.41. And if he should move to another place in the city, he must notify the Chief of Police within 48 hours and, in effect, re-register. §52.40.

The impact of these provisions on rights guaranteed by the Constitution is, as we shall see, both sharp and significant.*

Right of Privacy. Among our expanding constitutional guarantees is a right of privacy—a right to be

*Although the essential vice of the ordinance is apparent from its application to appellant, she is also entitled to attack the ordinance on its face and thus to call into question the entire scheme of registration where constitutionally-protected rights are involved. *Thornhill v. Alabama*, 310 U. S. 88, 96-98; *Lanzetta v. New Jersey*, 306 U. S. 451, 453.

let alone, free from unwarranted government intrusion. In *Watkins v. United States*, 353 U. S. ....., ..., 1 L. ed. 2d 1273, 1290, this Court pointed to "the responsibility placed by the Constitution upon the judiciary to insure that the Congress does not unjustifiably encroach upon an individual's right to privacy. . . ." Many years earlier Mr. Justice Brandeis emphasized that the makers of our Constitution "conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 277 U. S. 438, 478 (dissenting opinion). Mr. Justice Douglas struck the same note when he wrote "The right to be let alone is indeed the beginning of all freedom." *Public Utilities Commission v. Pollak*, 343 U. S. 451, 467 (dissenting opinion).

The right of privacy is the synthesis of a number of constitutional rights which are applicable here by virtue of the Due Process Clause of the Fourteenth Amendment. The First Amendment shelters the privacy of thought and belief and circumscribes inquiry into private and personal affairs. *West Virginia State Board v. Barnette*, 319 U. S. 624, 642; *United States v. Rumely*, 345 U. S. 41, 58 (concurring opinion). The Fourth Amendment's prohibition of unreasonable searches and seizures "marks the right of privacy as one of the unique values of our civilization." *McDonald v. United States*, 335 U. S. 451, 453. The right to be let alone is also an aspect of the "liberty" which is guaranteed by the Fifth and Fourteenth Amendments. See *Meyer v. Nebraska*, 262 U. S. 390; *Pierce v. Society of Sisters*, 268 U. S. 510. Taken together, these constitutional guarantees establish that a vital area of a person's life is entitled to special protection from governmental intrusion.

The Los Angeles ordinance erodes this precious right to be let alone. Although he may be completely rehabilitated, the "convicted person" must register with the Chief of Police and furnish detailed information which may be transmitted to federal, state or local law enforcement officers. §§52.39, 52.42. Even if his instance of criminality is overshadowed by as much as 35 years of lawful conduct, he will be fingerprinted and his photograph will be taken and made a part of a rogues' gallery which may be exhibited to the public. Moreover, if he changes his residence in Los Angeles, he must notify the Chief of Police within 48 hours.

Privacy is thus compromised. A neighbor who has been a witness to a completely unrelated crime may be shown a convicted person's picture in a rogues' gallery and thereafter spread the poison word. *Cf. State v. Tyndall*, 224 Ind. 364, 66 N. E. 2d 755, 762 (1946), appeal dismissed, 333 U. S. 834. Moreover, the possibility that there may be leaks or careless disclosures from the registration records of federal, state or local law enforcement agencies is far from remote. Under the terms of §52.42(b), a police officer apparently is free to disclose the registration data if he does so "in the regular course of his duties."

It is no mere technical or exaggerated sense of privacy which is violated by the ordinance. On the contrary, it hits the ex-convict where it may hurt him most. Disclosure of an ex-convict's past—even the reminder of it involved in his registration—may have dire consequences on his rehabilitation. James V. Bennett has stated:

> ". . . . It has been my policy as Director of the Federal Bureau of Prisons not to disclose informa-

> tion which would identify any living individual as a former inmate of our prison system, if there is any possibility it might harm him. If he has rehabilitated himself it is especially important that nothing be done to discourage him or thwart his efforts to adjust in the community. . . ." *Bernstein v. National Broadcasting Co.*, No. 249 Misc. 1956 Term, cert. denied, 352 U. S. 945, R. 102.

A similar view has been expressed by Austin H. MacCormick, Professor of Criminology, University of California:

> "Under present penal and correctional methods in the United States, a very substantial percentage of our ex-prisoners are rehabilitated, do not again revert to crime, and become respectable citizens. The will to accomplish this rehabilitation, with the stigma of the ex-convict working against one at every turn, rests in large part on the belief that it is possible to live down a criminal record by years of law-abiding life." *Id.* at 102.

A lucid exposition of the rationale of the right of privacy as applied to convicted persons appears in *Melvin v. Reid*, 112 Cal. App. 285, 297 Pac. 91 (1931). There the court, in holding that a motion picture depicting unsavory incidents from the life of a prostitute who had reformed and rehabilitated herself constituted an invasion of the right of privacy, stated:

> "One of the major objectives of society as it is now constituted, and of the administration of our penal system, is the rehabilitation of the fallen and the reformation of the criminal. Under these theories of sociology it is our object to lift up and sustain the unfortunate rather than tear him down. Where a person has by his own efforts rehabilitated himself,

we, as right-thinking members of society, should permit him to continue in the path of rectitude rather than throw him back into a life of shame or crime. . . ." 112 Cal. App. at 292, 297 Pac. at 93.

Right to Liberty. The liberty guaranteed by the Fourteenth Amendment is "not confined to mere freedom from bodily restraint" but "extends to the full range of conduct which the individual is free to pursue." *Bolling v. Sharpe*, 347 U. S. 497, 499-500. For the convicted person this "liberty" is significantly diminished by the Los Angeles ordinance.

We say "significantly diminished" because the impact of the ordinance far transcends the physical burdens of the registration process. The fact of registration may subject the convicted person to frequent detention and questioning during police roundups of suspects for crimes of which he is completely innocent. Moreover, the requirement in §52.39(d) that a convicted person reveal his prior criminal record may facilitate his subsequent conviction under the California habitual criminal statute, Penal Code §644, and thus be tantamount to compelling self-incrimination. And, as we have explained above, the psychological impact of registration, and the dissemination of photographs, fingerprints and other data, may seriously jeopardize the convicted person's rehabilitation.

Beyond that, the ordinance meaningfully curtails the right of a person "to live and work where he will," which is unquestionably encompassed within the concept of "liberty." *Williams v. Fears*, 179 U. S. 270, 274. A convicted person who wishes to move to Los Angeles or to change his residence within Los Angeles must say

to himself, "I can do this only if I am willing to register with the Chief of Police, acknowledge my past record, and provide him with a great deal of information about myself." The prospect of this demeaning experience amounts to a formidable restriction on a person's freedom to live and work where he will.

These consequences of the registration system make it clear why the Court has spoken of registration legislation as involving "unnecessary and irritating restrictions upon personal liberties" and has emphasized that "champions of freedom for the individual have always vigorously opposed burdensome registration systems." See *Hines v. Davidowitz*, 312 U. S. 52, 70-71; *cf. United States v. Witkovich*, 353 U. S. 194.

Privileges and Immunities. The right to move freely within the United States is an incident of national citizenship protected against interference by the privileges and immunities clause of the Fourteenth Amendment. *Edwards v. California*, 314 U. S. 160, 178-186 (concurring opinions).* Even before the Fourteenth Amendment was enacted, this right of locomotion throughout the nation was held to be a right of national citizenship. *Crandall v. Nevada*, 6 Wall. 35. "It is plain," said Mr. Justice Douglas, "that the right of free ingress and egress rises to a higher constitutional dignity than that afforded by

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*Mr. Justice Jackson's concurring opinion states that circumstances may warrant some restrictions by a state on a citizen's right to migrate, but Mr. Justice Douglas' opinion, concurred in by Justices Black and Murphy, expresses no such qualification. In any event, as we shall subsequently see, status as an unregistered convicted person is no justification for interference with right to migrate.

state citizenship." *Edwards v. California,* 314 U. S. at 181 (concurring opinion).*

The Los Angeles ordinance encumbers this right to move freely within the United States. If a convicted person wishes to move to Los Angeles, his right to do so is burdened with a requirement that he register with the Chief of Police and furnish detailed information to him. If he wishes to change his place of residence within the city he must notify the Chief of Police and in effect re-register. If he should happen to travel to Los Angeles five times within a month, he must register, even though he does not intend to reside there. The Constitution forbids such burdens on the right of free transit in the same way that it outlaws devices designed completely to prevent such transit. *Crandall v. Nevada,* 6 Wall. 35.**

B. Status as a "Convicted Person" Does Not Justify the Ordinance's Infringement of Constitutional Rights.

The Los Angeles ordinance, as we have pointed out, penalizes not conduct, but a morally innocent and passive status—namely, being an unregistered convicted person in Los Angeles. As we shall show, the mere fact of that

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*The statement of the Court in *Williams v. Fears,* 179 U. S. 270, 274, though made without specific reference to the privileges and immunities clause, is nonetheless pertinent: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." See also Chafee, Three Human Rights in the Constitution 162-193 (1956).

**If the requirement of registration can properly be regarded as punishment, the Los Angeles ordinance is a bill of attainder prohibited by the Constitution, for it applies "to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial." *United States v. Lovett,* 328 U. S. 303, 315-316.

status does not justify the restrictions outlined above on the right of privacy, right to liberty, and privileges and immunities of citizens of the United States.

It will be revealing to consider first the only case cited by appellee in which this Court has indicated that a group of persons can be subjected to regulation because of their status rather than their occupation or activities. In *City of New York v. Miln*, 11 Pet. 102, this Court upheld a New York statute requiring that the master of every ship arriving at the port of New York report the name, place of birth, last legal settlement, age, and occupation of every passenger. Appellee points out (Br. on first argument 9-11) that in upholding the statute, the Court stated that "it is as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported . . .", 11 Pet. at 142-143.

The *Miln* case, however, was severely criticized in *Edwards v. California*, 314 U. S. 160. The Court pointed out that *Miln* was decided in 1837 and stated:

> "Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a 'moral pestilence.' Poverty and immorality are not synonymous." 314 U. S. at 177.

Mr. Justice Douglas' concurring opinion in the *Edwards* case dealt with the indigent status in terms directly applicable to the instant case. He said that to allow a state to curtail the right of free movement of those who are poor or destitute would

> ". . . introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. . . ." 314 U. S. at 181.

Justice Jackson, also concurring, wrote that "The mere fact of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color." 314 U. S. at 184-185.

Thus, the *Miln* case, far from being authority for the Los Angeles ordinance, was unanimously disapproved in terms which underscore the vice of the ordinance which confronts the Court in this case. The fact that a person has at one time been convicted of a crime does not, any more than the fact of indigence, constitute a present "moral pestilence." To uphold the ordinance would permit those stigmatized as "convicted persons" to be relegated to an inferior class of citizenship. And because of their status, such persons would be handicapped in building a new life in another city.

Except for the *Miln* case, in every case cited by appellee in which a registration statute has been upheld, the requirement was imposed on persons engaged in an occupation or other active conduct which is properly subject to regulation under the police power. *United States v. Harriss*, 347 U. S. 612 (lobbyists); *United States v. Kahriger*, 345 U. S. 22 (bookmakers); *Bryant v. Zimmerman*, 278 U. S. 63 (members of secret society);

Walton v. City of Atlanta, 181 F. 2d 693 (5th Cir., 1950) (taxi and bus drivers); *City of Manchester v. Leiby*, 117 F. 2d 661 (1st Cir., 1941) (persons selling literature on streets);* *United States v. Peace Information Center*, 97 F. Supp. 255 (D. D. C., 1951) (foreign agents); *United States v. Slaughter*, 89 F. Supp. 205 (D. D. C., 1950) (lobbyists).** Such cases afford no precedent for imposing registration requirements on persons such as appellant solely by reason of a morally innocent and entirely passive status.

Indeed, statutes penalizing an innocent status have repeatedly been declared unconstitutional. In *Hawaii v. Anduha*, 48 F. 2d 171 (9th Cir., 1931), the court invalidated a Hawaii statute making it a crime habitually to "loaf," "loiter," or "idle" on any street, highway or public place.*** Similarly, in *City of St. Louis v. Gloner*, 210 Mo. 502, 109 S. W. 30 (1908), the Missouri Su-

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*But *cf. Thomas v. Collins*, 323 U. S. 516.

**The Federal Alien Registration Act, 66 Stat. 224 (1952), 8 U. S. C. §1302, and such cases as *Fong Yue Ting v. United States*, 149 U. S. 698 (registration of certain aliens) stand on a different footing. It has long been recognized that Congress, in furtherance of its power "To establish an uniform Rule of Naturalization," has pervasive power with respect to aliens. U. S. Const. Art. I, §8, cl. 4; see *Harisiades v. Shaughnessy*, 342 U. S. 580, 586.

***The court quoted the statement of the Supreme Court of Hawaii: "Visitors, lured by the fame of our climate and of our natural scenery and the hospitality of our people, come here for recreation and pleasure. Many of them, having no other occupation, habitually but harmlessly idle or loiter upon our streets and highways. In their pursuit of happiness, which is a guaranteed right, they loiter before shop windows, pause to enjoy the changing colors of the ocean and to talk with friends. It would be shocking to say that so long as they are innocent of any wrong and conduct themselves with due regard to the rights of others and the good order of the community the legislature has the constitutional authority to declare them misdemeanants and subject them to arrest and imprisonment." 48 F. 2d at 172.

preme Court declared void a city ordinance making it unlawful for a person to "lounge, stand or loaf around" public places. Less than a year ago it was held an "unlawful invasion of personal rights and liberties" for the City of Chico, California, to prohibit, subject to very limited exceptions, persons under 17 years of age from being in any public place between 10 P.M. and 5 A.M. *Alves v. Justice Court*, 148 A. C. A. 441, 306 P. 2d 601 (1957).*

The ordinance's restriction of constitutional rights cannot be justified on the assumption that "convicted persons" are more likely than the population in general to commit crimes.** A similar assumption might be made with respect to indigents with at least as much plausability,*** and yet the *Edwards* case establishes that the status of indigence cannot be a basis for a deprivation of constitutional rights. Likewise, there may be evidence that the crime rate among negroes is higher than that for the population as a whole,**** but it seems apparent that negroes could not be required to register on that basis.

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*Analogous to these cases is *Stromberg v. California*, 283 U. S. 359, where this Court held unconstitutional a California Penal Code provision making it unlawful to display a red flag in a public place as a sign, symbol or emblem of opposition to organized government. See also *Wieman v. Updegraff*, 344 U. S. 183, 191 ("Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power.")

**The accuracy of such an assumption is assessed at pp. 36-41.

***See argument for appellee in *Edwards v. California*, 314 U. S. at 167-168.

****See 27 FBI Unif. Crime Rep. 113 (1956); Sutherland, Principles of Criminology 138-143 (Cressey ed. 1955).

Nor can support for the Los Angeles ordinance properly be drawn from the power of states to prevent convicted persons from practicing medicine, *Barsky v. Board of Regents*, 347 U. S. 442, from practicing law, see *Theard v. United States*, 353 U. S. ....., 1 L. ed. 2d 1342, from holding public office, *State v. Langer*, 65 N. D. 68, 256 N. W. 377 (1934), or even from voting, see *Fiswick v. United States*, 329 U. S. 211, 222.* In each such instance the state has special responsibility and power to prescribe standards for participation in the occupation or activity from which the convicted person is barred. In contrast, no power of regulation or control arises from the mere fact of "being" in Los Angeles. A person's active conduct or his right to participate in an occupation is a proper subject of regulation under the police power, but his innocent and passive status is not.

The principal cities in other countries with a common law background similar to ours have not found it necessary or desirable to maintain the close surveillance of convicted persons imposed by the Los Angeles ordinance. As set forth in the margin,** major cities in Australia,

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*"Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate." *Breedlove v. Suttles*, 302 U. S. 277, 283; see U. S. Const. Art. 1, §2, Cl. 1, and §4, Cl. 1.

**On July 8, 1957, we sent inquiries to the Chief of Police in 39 cities in 20 countries to determine whether registration ordinances are in effect in the major cities in common law countries or in certain other cities. The replies indicate that the following cities do not require registration of convicted persons: in Australia: Adelaide, Brisbane, Melbourne, Perth, and Sydney; in Canada: Ottawa, Toronto, Vancouver, and Winnipeg; in Ceylon: Colombo; in England: Birmingham, Liverpool, London, and Sheffield; in Germany: Berlin; in India: Hyderabad; in New Zealand: Wellington; in

Canada, Ceylon, England, New Zealand, Northern Ireland, Scotland, and Wales have indicated that they do not have ordinances requiring the registration of convicted persons. No city in any common law jurisdiction has reported that it has such an ordinance.*

It is perhaps not surprising that the practice in totalitarian countries is to the contrary. In the Soviet Union a registration system requiring every citizen to carry a passport is in force throughout the country except on the collective farms.** In Nazi Germany registration requirements reached a zenith. Kempner, The German National Registration System as Means of Police Control of Population, 36 J. Crim. L. & C. 362 (1946).

Northern Ireland: Belfast; in Scotland: Edinburgh and Glasgow; and in Wales: Cardiff. No city has reported that it has such an ordinance. The replies from Oslo and Stockholm indicate that the national governments of Norway and Sweden maintain a central file of persons convicted of crimes, but there is no indication that said cities or national governments require convicted persons to register. At the time this brief was printed, no reply had yet been received from the following cities: Auckland, Bombay, Buenos Aires, Calcutta, Copenhagen, Hamburg, Helsinki, Karachi, Madras, Manila, Montreal, New Delhi, Paris, Rio de Janeiro, and Zurich. The Chief Constable in Manchester, England, indicated that he could not properly supply the requested information. A copy of the letter of inquiry and the replies have been filed with the Clerk, and copies have been supplied to the parties.

*State or national legislation in England, Scotland, Wales, and the State of Andhra Pradesh, India requires some multiple offenders to notify the police or private authorities of their addresses for a limited period after release from imprisonment. These statutes are discussed at pp. 44-45, *infra*.

**Vlasov and Evtikhiev, Soviet Administrative Law 289-294 (1950) (translated from the Russian by Professor Leon Lipson, Yale Law School). The following justification for the system is offered in this text: "In the struggle with the remnants of the defeated class enemies, parasites, swindlers, and declassed elements, measures were required for keeping track of the population, for its registration, in order to bring to light those elements, hostile to Soviet authority and harmful to the Soviet state, residing in cities, institutions, factories and workshops."

Ordinances requiring the registration of convicted persons are a recent development in the United States, the 1933 Los Angeles ordinance being the forerunner.* Only a small fraction of cities in this country now have such ordinances. In 1953 and 1954 the Pennsylvania Law Review sent questionnaires concerning criminal registration ordinances to the 400 cities in the United States with a population over 25,000. Note, 103 U. of Pa. L. Rev. 60, 107 (1954).** Of the 241 cities which responded, only 43 or about 18 per cent have such ordinances. *Ibid.* Only five states have registration laws and all are more narrowly drawn than the Los Angeles ordinance. *Id.* at 65.*** More significantly, the constitutionality of these registration ordinances or laws has apparently never previously been determined by a federal court or a state court of last resort, and even in lower state courts, litigation concerning such provisions has been infrequent and inconclusive. *Id.* at 95-96.

C. The Ordinance Is Not Reasonably Restricted to the Evil With Which It Purports to Deal.

In *Butler v. Michigan*, 352 U. S. 380, this Court invalidated Section 343 of the Michigan Penal Code which

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*In Colonial Massachusetts, however, under the General Laws of 1672, the letter "B" was branded on the forehead of every convicted burglar or highway robber, and a "Vagabond Quaker" could be punished by branding on the shoulder. The Colonial Laws of Massachusetts 12-13, 62-63 (Whitmore ed. 1887). This, it seems safe to say, is not a proud memory.

**The six cities under 25,000 to which the law review sent inquiries are disregarded here because, as the Note itself pointed out, they are not statistically significant. *Ibid.*

***5 Arizona Rev. Stat. Ann. §13—1271-1274 (sex offenders only); California Penal Code §290 (sex offenders only); Chapter 28470, 1953 Laws of Florida (felon registration in cities over 450,000); 38 Illinois Ann. Stat. §192.29-192.32 ("drug addicts" only); N. J. Stat. Ann. 2A:169A-1 (narcotics law violators only).

in effect, made it a misdemeanor to sell or make available to the general reading public any book containing obscene language "tending to the corruption of the morals of youth." The Court held that the statute was "not reasonably restricted to the evil with which it is said to deal," because it quarantined the general reading public against books in attempting to prevent corruption of youth. For that reason the Court concluded that the legislation "arbitrarily curtails" one of the liberties of the individual enshrined in the Due Process Clause of the Fourteenth Amendment. 352 U. S. at 382-383. Examination of the provisions of the Los Angeles ordinance will show that it likewise is an arbitrary curtailment of liberty because it is not reasonably restricted to the evil with which it purports to deal.

The Los Angeles ordinance is "directed at the evil of professionalism in crime," as appellee readily concedes (Br. on first argument 3).* Appellee urges that "There seems to be no good reason why a municipality may not require the registration of 'professional criminals'" (*Id.* at 19). The ordinance, however, is not drawn so as to secure the registration only of "professional criminals." On the contrary, it requires the registration of anyone who has been convicted anywhere in the world since 1921 of an offense punishable as a felony in California (or of other specified offenses) regardless of the penalty actu-

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*The statement of purpose in §8 of the original version of the Los Angeles ordinance states that the ordinance is directed against "habitual and dangerous criminals traveling from place to place." Ordinance No. 73,013; see Los Angeles Daily Journal, September 13, 1933, p. 10.

ally imposed.* To sweep so broadly for the purpose of dealing with the "evil of professionalism in crime" is, as we shall see, another instance of burning the house to roast the pig. *Butler v. Michigan*, 352 U. S. at 383.

First Offenders and Probationers. The unwarranted broadness of the ordinance is most graphically shown with respect to first offenders and probationers. The available data shows that the great bulk of them become and remain law-abiding citizens.

The good record compiled by federal probationers was pointed out by Mr. Chief Justice Warren in the following statement before the American Law Institute in 1955:

> ". . . The reports indicate that about five-sixths of offenders placed on probation in the federal courts fulfill the terms of their probation. While only scattered studies have been made throughout the country of the conduct of probationers after successfully completing probation, it seems reasonable to suppose that most persons who live orderly lives for substantial periods of probation will continue to do so after being discharged. A careful study which was made a number of years ago in the Northern District of Alabama, under the direction of Dr. Morris G. Caldwell, professor of sociology in the University of Alabama, with the aid of members of the probation staff of the Northern District of Alabama for interviews, bears this out. Of 403 persons who were selected by an approved sampling method from per-

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*The pervasive thrust of the ordinance is illustrated by the fact that India's Prime Minister Nehru would apparently have to register if he came to Los Angeles. In 1922, as the result of picketing during his country's independence struggle, Mr. Nehru was sentenced to 18 months' imprisonment for extortion, an offense which would have been punishable as a felony in California. Compare Nehru, Toward Freedom, 84-85 (1941), with California Penal Code §§519-520.

sons who had successfully completed probation during a period ranging from 5½ years to 11½ years prior to the study, 395, or 98 per cent, were free from conviction of felonies, and 337, or 83.6 per cent, were free from subsequent convictions of any kind, either felonies or misdemeanors." Warren: Probation in the Federal System of Criminal Justice, quoted in 19 Federal Probation No. 3, p. 3, (Sept. 1955).

The figures cited by the Chief Justice are confirmed in a recent study by Dr. Ralph W. England of the University of Illinois which indicates that only 17.7 per cent of a sampling of federal probationers were convicted of a felony or misdemeanor in a 7-12 year period subsequent to completion of probation. England, A Study of Post-probation Recidivism Among Five Hundred Federal Offenders, 19 Federal Probation No. 3, p. 10 (Sept. 1955).* Dr. England's study, which was instituted by the Administrative Office of the United States Courts, dealt with 500 federal offenders who successfully finished probation between 1939 and 1944 and who had not been originally sentenced to a penal institution. The group, which contained 62.4 per cent first offenders,** was studied in 1951

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*In a later article Dr. England offers the following explanation for the close similarity between his findings and those of other researchers: ". . . Much recent research had indicated that most people commit one or two crimes in the course of their lives for which they are not caught, but that most of them refrain from making a habit of it. It seems quite possible that probation is tapping into this 'self-correcting' segment of offenders, since probation deals mainly with first offenders and minor recidivists." England, What Is Responsible for Satisfactory Probation and Post-Probation Outcome?, 47 J. Crim. L., C. & P. S. 667, 675 (1957).

**Because of the evident tendency of judges to give first offenders probationary sentences, any group of probationers is likely to have a significant percentage of first offenders.

to determine the incidence of felony or misdemeanor convictions subsequent to the completion of probation.

The first offenders within the group studied by Dr. England had an even better record than the group as a whole. Of those who had no arrests prior to their federal offense, only 7.3 per cent had post-probation convictions; for those with no prior conviction, the recidivism rate was 11.8 per cent. On the other hand, of those who had been arrested prior to their federal offense, 28.2 per cent had post-probation convictions, and for those with previous convictions, the recidivism rate was 32.6 per cent. The recidivism rate rose from 20.9 per cent for those with one or two prior arrests to 47.8 per cent for those who had been arrested five or six times previously.

Other studies in the field of criminology bear out the likelihood that first offenders will subsequently lead law-abiding lives and that their recidivism rate will be markedly less than that for multiple offenders. Rumney and Murphy, in Probation and Social Adjustment 160 (1952), a study of 1,000 Essex County, New Jersey, probationers, state:

> "It appears that there is considerable validity to the idea that first offenders need not get into any further difficulty with the law. Whatever the explanation, the fact remains that there is a large number of persons who get arrested only once in their lives."

Clark Tibbitts' study of 3,000 parolees indicates that first offenders violate parole less than one third as often as habitual criminals, as shown in the table set forth in the

margin.* Professor Thorsten Sellin's study of fingerprints, which probably reflects the incidence of arrest rather than conviction, shows that multiple offenders are about two and one-half times as likely to be fingerprinted again as are first offenders. Sellin, The Criminal History of Released Prisoners, 35 J. Crim. L. & C. 223 (1944).

A word should be said of the pioneering Glueck studies in the prediction of criminal behavior. The Gluecks investigated two test groups—500 young adult reformatory graduates and 1,000 young delinquents processed by the Boston Juvenile Court. In each group a surprisingly high percentage of the persons studied had engaged in criminal behavior prior to the reformatory term or court appearance which resulted in their inclusion in the Glueck samples.** When this fact is taken into account, the rela-

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* "Type of Offender in Relation to Record on Parole

		Record on Parole							
Type of Criminal	Total	Dis-charge	Per cent	Vio-lation	Per cent	Minor	Per cent	Major	Per cent
1. First Offender	1638	1348	82.3	290	17.7	126	7.7	164	10.0
2. Occasional Offender	1124	812	72.2	312	27.8	103	9.2	209	18.6
3. Habitual and Professional Criminals	238	98	41.2	140	58.8	29	12.2	111	46.6
Total	3000	2258	75.3	742	24.7	258	8.6	484	16.1"

Clark Tibbitts, Success or Failure on Parole Can Be Predicted: A Study of the Records of 3,000 Youths Paroled from the Illinois State Reformatory, 22 J. Crim. L. & C. 11, 25 (1931).

**93.4% of the 500 young adults were regarded as total or partial "failures" from the standpoint of lawful behavior prior to their reformatory sentence. Glueck and Glueck, After-Conduct of Discharged Offenders 21-22 (1945). All but 45 of the 1,000 delinquents had been "seriously delinquent" prior to the arrest which brought them into Boston Juvenile Court. *Id.* at 17.

tively high percentage of subsequent recidivism revealed by the Gluecks is easily understood. Moreover, the Glueck researches substantiate the conclusions of the other studies, namely, that the first-offender group is by far the least recidivistic. See Glueck and Glueck, 500 Criminal Careers 250, 282 (1930).*

We are not aware of any studies which compare the crime rate of the first-offender group with that for the population as a whole. However, the FBI Uniform Crime Reports afford a basis for rough approximations. During 1955, police in 1,771 cities with an aggregate population of 66 million arrested and charged 2.9 million persons (4.46 per cent of the population) with violations other than traffic. 27 FBI Unif. Crime Rep. 51-53 (1956). Since approximately five people are found guilty for every seven who are arrested and charged, *Id.* at 57, it follows that in those cities approximately 2.1 million persons (3.2 per cent of the population) were convicted in 1955. Projecting those figures over a 10 years period, 21 million (32 per cent) of the aggregate population of those cities will have been convicted of a felony or misdemeanor. Even if the 32 per cent figure is substantially reduced to account for the repeaters among the persons convicted in any given year, it is apparent that the crime rate for the general population is not significantly less (and may even be greater) than that reported for first offenders in such studies as those of Caldwell and England.

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*Prior criminal record is a factor on all principal recidivism prediction tables. *E. g.*, Glueck and Glueck, 500 Criminal Careers 282 (1930); Hakeem, Glueck Method of Parole Prediction Applied to 1,861 Cases of Burglars. 36 J. Crim. L. & C. 87, 90, 93 (1945); Burgess, Factors Determining Success or Failure on Parole, 19 J. Crim. L. & C., No. 1, pt. II, pp. 239, 260-261, 264-265 (1928); Ohlin, Selection for Parole 52, 71, 124-125 (1951).

The foregoing materials demonstrate that a catchall registration ordinance of the Los Angeles type is neither reasonable nor necessary to accomplish its avowed purpose of combatting professionalism in crime. The first offender, especially if he is placed on probation, is sharply distinguishable from the "professional criminal" in terms of the only significant yardstick—the likelihood of subsequent criminal behavior. Indeed, the first offender, as we have observed, bears a much closer behaviorial resemblance to the population at large than to the professional criminal. See also Nussbaum, First Offenders—A Second Chance, 4 Crim. L. Rev. 1 (1957). Thus, to maintain surveillance of professional criminals certainly does not require invasion of the constitutionally-protected rights of every person who has been convicted of any crime punishable as a felony in California (or of certain other crimes) any place in the world.*

Time elapsed since conviction. Persons who have been convicted at any time since 1921 are required to register under the Los Angeles ordinance. Thirty-five years of lawful conduct affords no exemption from the dragnet of the ordinance. This result is directly contrary to belief in personal rehabilitation—a right to reform—which is a basic tenet of our American judicial system.

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*Extensive records to aid in criminal investigation will, in any event, be available to the Los Angeles police from the Federal Bureau of Investigation and the California State Bureau of Identification and Investigation, as well as from their own files. See Whitehead, The FBI Story 139 (1956) ("By mid 1956, the FBI had a total of 141,231,773 fingerprints on file . . ."); *Floherty*, Our FBI 89-120 (1951); 1954-56 Biennial Report of the Attorney General of California 51-62.

The essence of this right to reform was eloquently stated by the New York Court of Appeals in *People v. Pieri*, 269 N. Y. 315, 323, 327, 199 N. E. 495, 497, 499 (1936):

> ". . . We would never go so far, I am sure, as to say that because a man had been in prison he remained a criminal all his life. Some men, as we know, with no criminal propensities at all have made mistakes, been overtaken by temptation, and paid the penalty the state demands. We would not add to their burden by saying or even intimating that they should be shunned or classed as criminals.
>
> . . .
>
> "Persons who have been convicted of crime and served the sentence imposed are not thereafter barred from society or intercourse with other human beings; they are not outcasts, nor to be treated as such. The Legislature did not intend to close the doors to reformation, repentance, or a new try at life. . . ."

Only last Term in *Schware v. Board of Bar Examiners*, 353 U. S. 232, the Court in effect recognized the right to reform in holding that the State of New Mexico deprived Schware of due process by denying him permission to take the 1953 bar examination because of conduct all of which antedated 1940. The Court held that Schware's lawful and useful conduct since 1940 outweighed any inference of bad moral character that might have been drawn from his use of aliases from 1933 to 1937, his arrests prior to 1940, and his membership in the Communist party from 1932 to 1940. Yet under the Los Angeles ordinance, a person's exemplary conduct

since conviction as long ago as 1922 would not free him from the registration requirements.*

Not only is the Los Angeles ordinance at war with widely-recognized principles of rehabilitation, but it is also inconsistent with the available data on the relationship between recidivism and the time elapsed since conviction or release. Dr. England's study of 500 federal probationers, discussed above, shows that the likelihood of recidivism drops off drastically with the passage of time.**

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*The principle of rehabilitation is also reflected in *Theard v. United States*, 353 U. S. ....., 1 L. ed. 2d 1342, where the Court held that disbarment by the State of Louisiana of a lawyer who uttered a forgery in 1935 while suffering some degree of insanity should not have been automatically accepted by a federal district court in Louisiana. The Court pointed out that the illegal act had taken place 18 years before the disbarment proceedings and that the lawyer had actively practiced for six years after recovering his capacity, including the argument of 36 appellate cases, without being charged with any misconduct or impropriety.

** TABLE 2.—SPECIFIC YEAR AFTER END OF PROBATION WITHIN WHICH FIRST CONVICTION OCCURRED

YEAR	NUMBER	PERCENT	CUMULATIVE PERCENT
TOTAL	87	100.0	—
1st	24	27.6	—
2nd	9	10.4	38.0
3rd	13	14.9	52.9
4th	5	5.8	58.7
5th	9	10.3	69.0
6th	9	10.3	79.3
7th	6	6.9	86.2
8th	5	5.8	92.0
9th	1	1.1	93.1
10th	4	4.6	97.7
11th	2	2.3	100.0
12th	0	0.0	—"

England, A Study of Postprobation Recidivism Among Five Hundred Federal Offenders, 19 Federal Probation No. 3, at p. 14 (Sept. 1955).

The sharp decline in recidivism is also borne out by a study of federal parolees which revealed that most violations occur shortly after release and that only 4.1 per cent of those who violate parole do so more than two years after release. Killinger, Parole and Other Release Procedures, in Contemporary Correction 361, 365 (Tappan ed. 1951). Thus, it is apparent that continuing police surveillance of persons who were convicted as much as 35 years ago can only be justified by "so dogmatic an inference as to be wholly unwarranted." *Cf. Schware v. Board of Bar Examiners,* 353 U. S. 232, 251 (concurring opinion).

Many of the basic constitutional defects of the Los Angeles ordinance are pinpointed by comparison with the laws of foreign countries under which certain convicted persons may be required to notify authorities of their addresses. As indicated by the extract set out in the margin* in England and Wales multiple offenders

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*Section 22 of the Criminal Justice Act, 1948, 11 & 12 Geo. VI Ch. 58, provides: "(1) Where a person is convicted on indictment of an offence punishable with imprisonment for a term of two years or more and that person—

(a) has been convicted on at least two previous occasions of offences for which he was sentenced to Borstal training or imprisonment; or

(b) has been previously convicted of an offence for which he was sentenced to corrective training,

the court, if it sentences him to a term of imprisonment of twelve months or more, shall, unless having regard to the circumstances, including the character of the offender, it otherwise determines, order that he shall for a period of twelve months from his next discharge from prison be subject to the provisions of this section."

Section 29 of the Prison Act, 1952, 15 & 16 Geo. VI and 1 Eliz. II Ch. 52, provides in part: "(1) Where an order has been made under section twenty-two of the Criminal Justice Act, 1948,

(a) the offender shall, on his next discharge from prison and thereafter from time to time, inform the appointed society of his address in accordance with such instructions as may be given to him by or on behalf of the society: . . ."

may be required to notify a designated society (the Central After-Care Association, a private organization) of their addresses for a year after release from prison. This requirement is judicially imposed as a part of the sentence, rather than being a legislative act directed toward an entire class of persons. Moreover, those persons required to report their addresses must be given notice of their obligation by the governor of their prison.* Registration with the police is required only for failure to notify the designated society.

The provisions in force in Scotland under the Criminal Justice (Scotland) Act, 1949, 12, 13 & 14 Geo. VI Ch. 94, and the Prisons (Scotland) Act, 1952, 15 & 16 Geo. VI and 1 Eliz. II Ch. 61, are substantially identical with those in England and Wales. In the State of Andhra Pradesh, India, notification of address is required of habitual offenders and certain second offenders (the latter for not more than five years), but no such notification is required of "young" offenders or first offenders. Madras Act VI of 1948 (habitual offenders); The Indian Code of Criminal Procedure, Act V of 1898, §§562-565 (young, first and previously convicted offenders).

Consideration of these foreign statutes accentuates the arbitrary features of the Los Angeles ordinance, namely that it (1) fails to restrict its application to multiple or habitual offenders, (2) fails to limit the time following sentence or release during which registration with the Chief of Police is required, (3) fails to provide notice of its requirements, and (4) imposes duties with respect

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*Section 29(2), Prison Act, 1952, 15 & 16 Geo. VI and 1 Eliz. II Ch. 52.

to providing information and being photographed substantially in excess of the "notification of address" required by the foreign laws. Surely an ordinance so indiscriminate in its coverage and so demanding of its subjects is not reasonably restricted to coping with "the evil of professionalism in crime."

Conclusion.

The judgment of the court below should be reversed and the cause remanded with instructions to dismiss the complaint against appellant.

Respectfully submitted,

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August, 1957.

APPENDIX.

Los Angeles Municipal Code §§52.38-52.43.

SEC. 52.38. CONVICTED PERSON DEFINED.

For the purpose of Sections 52.38 to 52.43, inclusive, the words "convicted person" are defined as follows:

(a) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony.

(b) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted in the State of California, or elsewhere, of the violation of any law, whether the same is or is not punishable as a felony:

1. Relating to or regulating the possession, distribution, furnishing, or addiction to the unlawful use of any narcotic as defined and referred to in Division 10 of the California Health and Safety Code. (Amended by Ord. No. 106,989, Eff. 3/17/56.)

2. Regulating or prohibiting the carrying possession, or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument, or attachment designed or intended to be used for the purpose of silencing the report, or concealing the discharge or flash of any firearm;

3. Regulating or prohibiting the use, possession, manufacture, or compounding of tear gas, or any

other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(c) (Repealed by Ord. No. 106,989, Eff. 3/24/56.)

(d) Any person who has been, since January 1, 1921, or who hereafter is convicted of a crime in the State of California under the provisions of one or more of the following sections of the Penal Code of California, to wit: 264 [rape], 265 [abduction for marriage or defilement], 286 [sodomy], 288 [lewd or lascivious acts with child under 14], 288a [oral copulation], subdivision 1 of 647a [vagrancy: annoying or molesting child under 18], or of subdivisions 1 or 2 of 311 [indecent exposure], or who has been, since January 1, 1921, or hereafter is convicted in any place other than the State of California of an offense which, if committed in this State, would have been punishable under one or more of said sections. (Amended by Ord. No. 108,387, Eff. 12/27/56.)

1. Any person who has been since January 1, 1945, or who hereafter is convicted of a crime in the State of California under the provisions of Section 647(5) [vagrancy: lewd or dissolute persons or persons who loiter in or about public toilets in public parks] of the Penal Code of the State of California, or who has been since January 1, 1945, or hereafter is convicted in any place other than the State of California of any offense which, if committed in this State, would have been punishable under said section.

(e) Any person who has been, since January 1, 1921, or hereafter is convicted in the State of California or

elsewhere of any attempt or conspiracy to commit any offense described or referred to in this section.

(f) Provided, however, that any person, except as hereinafter set forth, whose conviction is or has been set aside in a manner provided by law, shall not be deemed a convicted person; provided further, however, that one who has been convicted of the commission of one or more of the crimes referred to in Subdivision (d) hereof, and whose conviction has been set aside at the termination of probation, and in connection therewith, shall be considered a convicted person, as such term is used in Section 52.28 [sic] to Section 52.43, inclusive.

SEC. 52.39. CONVICTS REGISTRATION—INFORMATION REQUIRED.

(a) It shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five days, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

(b) Any convicted person who does not reside in the City, but who has a temporary or permanent place of abode outside the City and comes into the City on five occasions or more during any thirty-day period, shall be subject to the provisions of Sections 52.38 to 52.43, inclusive, and shall, on or before entering the City on such fifth occasion, register in the manner prescribed in Subdivision (d) hereof.

(c) Provided, that any person who has once registered with the Chief of Police as a convicted person, shall not be required to register again, except as provided in Section 52.40 of this Code; provided further, however, that any person convicted of any of the crimes enumer-

ated in Subdivision (d) of Section 52.38 of this Code shall register as provided in this section, regardless of whether he has previously so registered as a convicted person by reason of his conviction of some crime other than those enumerated in said Section 52.38(d).

(d) Every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The place where each of such crimes was committed and the place or places of conviction;

5. The name under which he was convicted in each instance and the date thereof;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, *i.e.*, whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied each such place of residence, stopping place or place of abode; and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

SEC. 52.40 CONVICTS—CHANGE OF RESIDENCE.

Any convicted person, except a non-resident, who is required to register under the provisions of Sections 52.38 to 52.43, inclusive who changes his place or residence, stopping place or living quarters, shall, within 48 hours after such change, and any non-resident mentioned in Section 52.39(b) who has registered and changes his place of residence, stopping place or living quarters, shall, upon his next entry into the City after such change, notify the Chief of Police of such fact and furnish to such Chief of Police the address of his new residence, stopping place or living quarters in the same manner and with the same detailed information as is required in the filing of the original statement under the provisions of Section 52.39.

SEC. 52.41. CONVICTS, PHOTOGRAPHING AND FINGERPRINTING.

Each convicted person, at the time of registering and furnishing the information required by Sections 52.39 and 52.40 shall be photographed and fingerprinted by the Chief of Police, who shall cause such photographs and fingerprints to be made a part of the record provided for by Sections 52.41 and 52.43.

SEC. 52.42. RECORDS CONFIDENTIAL.

(a) The statements, photographs and fingerprints hereinbefore provided for shall not be open to inspection by the public, or by any person other than a regularly employed peace or law enforcement office [sic]. Any such photograph, or duplicates thereof, may be exhibited to persons other than police officers of the City for the purpose of assisting in identifying perpetrators of any crime. Copies of said statements, photographs and fingerprints may be transmitted to the sheriff of any county of the State of California, to the head of any organized police department of any municipality in said state, or to the head of any department of the State of California engaged in the enforcement of any criminal law of this state, or to the head of any federal law-enforcement agency, or to any sheriff or chief of police of a municipality, or to the head of any other law-enforcement agency of any state in any state or territory outside the State of California, when request is made in writing by such sheriff or other head of a law-enforcement agency asking for the record of a certain person named therein, or for the record of a person whose photograph or fingerprints reasonably correspond with photographs or fingerprints submitted with such request, and stating that such record is deemed necessary for the use of such law enforcement officer or agency in or concerning the investigation of any crime, or any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for such purpose.

(b) Any police officer or other employee of the Police Department who discloses to any person any information

contained in any statement required to be filed under the provisions of Sections 52,38 to 52.43 inclusive, otherwise than in the regular course of his duties, shall be guilty of a misdemeanor.

(c) Nothing contained in Sections 52.38 to 52.43 inclusive, shall prevent the Chief of Police from furnishing to the sheriff of any county, the Chief of Police of any municipality, or the head of any other law-enforcing agency which maintains any system of registration of convicted persons copies of the statements required to be filed under the provisions of Sections 52.38 to 52.43 inclusive, together with photographs and fingerprints of persons making such statements when and if such sheriff, chief of police, or other head of a law-enforcing agency furnishes to the Chief of Police of this City copies of statements, photographs and fingerprints procured by him, and it is hereby made the duty of such Chief of Police to arrange for the exchange of such information.

(d) Any police officer or other employee of the Police Department may, any other provisions herein notwithstanding, furnish to persons other than peace officers, photographs, fingerprints, descriptions and other data relative to persons registered as convicted persons, as defined by Sec. 52.38(d)-1 of this Code, for the purpose of furnishing the information required by Sec. 41.11.2 of this Code, or for the purpose of securing and effecting the enforcement of said section; and the furnishing of such information, pictures or fingerprints shall be within the regular course of his duties.

SEC. 52.43. FALSE STATEMENTS.

(a) No person required by any provision of Sections 52.38 to 52.42 inclusive, to furnish a statement, shall in such statement give any false or fictitious address or any address other than a true address or intended address, or furnish in the making of any such report any false, untrue or misleading information or statement, relating to any information required by any of the provisions thereof to be made or furnished.

(b) Continuing Offense. The duty to furnish statements when and in the manner provided by Sections 52.38 to 52.42 inclusive, is hereby declared to be a continuing one, and for each day that any person required under the provisions of Section 52.38 to 52.42 inclusive to furnish a statement fails to do so, such failure shall constitute a separate offense; provided, however, that no person may be convicted more than once on account of violations occurring by reason of failure, on a series of days, to furnish such statements; provided, further, that nothing contained herein shall be deemed a bar to subsequent prosecutions for violations of the provisions of this Code occurring subsequent to a prior conviction or acquittal of a violation thereof.